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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,

Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

In re:
USA SECURITIES, LLC,

Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

USACM LIQUIDATING TRUST,

Plaintiff,

v.

JAMES CIOFFI ARCHITECT, CORPORATION

Defendant.

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR
BK-S-06-10728-LBR
BK-S-06-10729-LBR

JOINTLY ADMINISTERED
Chapter 11 Cases

Judge Linda B. Riegler

Adversary No. 08-____

**USACM LIQUIDATING
TRUST'S ORIGINAL
COMPLAINT**

Hearing Date: n/a
Hearing Time: n/a

1 Plaintiff, USACM Liquidating Trust (the “Trust”), as successor to USA Commercial
2 Mortgage Company, hereby complains as follows:

3
4 **I. NATURE OF THIS ACTION**

5 1. In April 2006, USA Commercial Mortgage Company (“USACM”), USA Capital
6 Diversified Trust Deed Fund, LLC (“DTDF”), and certain related entities were forced to file for
7 bankruptcy protection as a result of the gross misconduct by certain insiders, namely Thomas A.
8 Hantges (“Hantges”) and Joseph D. Milanowski (“Milanowski”) (collectively, the “Culpable
9 Insiders”). Among other wrongful conduct, the Culpable Insiders systematically looted USACM
10 and DTDF to fund USA Investment Partners, LLC (“USAIP”), an entity that functioned as their
11 personal “piggy bank,” as well as other entities in which they stood to reap substantial personal
12 profits.
13

14 2. In the aggregate, the Culpable Insiders misappropriated tens of millions of dollars
15 from USACM and DTDF in order: (a) to fund the negative cash flow operations of USAIP and its
16 vast network of affiliated entities; and (b) to pay USAIP’s obligations to third parties. In this
17 adversary proceeding, the Trust seeks to recover \$107,013.51 of funds misappropriated from
18 USACM and fraudulently transferred to Defendant.
19

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21 **II. JURISDICTION / VENUE**

22 3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§
23 157 and 1334(b) in that this action arises under, arises in, and/or relates to this bankruptcy case.

24 4. This action is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (H), and (O).

25 5. This is an adversary proceeding pursuant to Fed. R. Bankr. P. 7001.
26

1 6. The Defendant is subject to personal jurisdiction in this Court.

2 7. This Court has venue over this proceeding pursuant to 28 U.S.C. § 1409(a).

3
4 **III. PARTIES**

5 **A. PLAINTIFF**

6 8. Plaintiff Trust was created pursuant to the Third Amended Joint Chapter 11 Plan of
7 Reorganization (the “Joint Plan”) filed by USACM, DTDF, and three other debtors in Bankruptcy
8 Case No. 06-10725 (Docket No. 1799). The Joint Plan was confirmed by the Bankruptcy Court on
9 January 8, 2007, and became effective on March 12, 2007. The Joint Plan expressly retained
10 USACM’s causes of action for enforcement by the Trust, pursuant to 11 U.S.C. § 1123(b)(3)(B).
11 The Joint Plan also transferred certain causes of action belonging to USA Capital First Trust Deed
12 Fund, LLC to the Trust. The Trust, therefore, has standing to bring this action against the
13 Defendant. The Trust is a liquidating trust organized under Nevada law. The Trust’s beneficiaries
14 are the holders of allowed unsecured claims against USACM. Geoffrey L. Berman serves as the
15 trustee of the USACM Trust and may be served through undersigned counsel.

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18 **B. DEFENDANT**

19 9. Defendant, James Cioffi Architect Corporation (“Cioffi”), is a California corporation
20 with its principal place of business in the State of California at 2121 E. Tahquitz Canyon Way, Suite
21 3, Palm Springs, California 92262-7021. Defendant Cioffi can be served through its registered
22 agent, David Baron, at 1900 E. Tahquitz Canyon Way, Palm Springs, California 92262.
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1 **IV. FACTUAL ALLEGATIONS**

2 **A. BACKGROUND OF USACM AND ITS DEMISE**

3 10. In April 2006, USACM and certain related companies collapsed due to the fraud
4 perpetrated on them by Culpable Insiders. Beginning as early as 1997, the Culpable Insiders
5 employed a pervasive “Ponzi”-like scheme that enabled them to loot and/or misappropriate tens of
6 millions of dollars from USACM. As a result of these wrongful activities, USACM was insolvent
7 at least as early as December 31, 2001, if not earlier. Eventually USACM (the “Debtor”) filed for
8 relief under Chapter 11 of the Bankruptcy Code on April 13, 2006 (the “Petition Date”).
9

10 11. USACM was a mortgage broker and loan servicing company whose primary
11 business activities were: (a) “originating” short-term loans from investors to real estate developers;
12 and (b) servicing the loans that it originated by collecting principal and interest from borrowers and
13 distributing those payments to the investors. USACM earned revenue by charging various fees for
14 these services, including origination, servicing, and extension fees, although these fees often went
15 uncollected.
16

17 12. A significant portion of the fee revenues that USACM actually received was
18 subsequently misappropriated by the Culpable Insiders. Specifically, the Culpable Insiders
19 misappropriated USACM’s money to fund entities in which they held an indirect ownership interest
20 through USA Investment Partners, LLC (“USAIP”), including time-share hotels, real estate
21 development entities, and technology companies. The Culpable Insiders often earmarked USACM
22 funds and used USAIP as a conduit for fraudulently transferring these funds to such entities. In
23 other instances, the Culpable Insiders caused USACM to directly transfer funds to entities in which
24
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1 USAIP and the Culpable Insiders had an interest. In the aggregate, the Culpable Insiders
2 misappropriated tens of millions of dollars from USACM to fund their outside business ventures.

3
4 13. It was completely adverse to USACM's interests for the Culpable Insiders to
5 misappropriate USACM's funds for the benefit of USAIP. USACM owed no obligation, and
6 received no benefit for the money provided to USAIP and/or on its behalf. The Culpable Insiders
7 did not charge and/or collect interest on any of these transfers of USACM's funds, thereby
8 precluding USACM from using this money in legitimate investments. In addition, the Culpable
9 Insiders rarely repaid transfers of USACM's funds for USAIP's benefit. In the aggregate, USACM
10 transferred at least \$58 million to USAIP to fund USAIP's investments and pay its obligations.¹
11 Prior to the Petition Date, USAIP's obligation to repay USACM was undocumented and appeared
12 only as an enormous intercompany receivable to USACM. In at least some instances, the
13 Bankruptcy Court has already found that USACM did not receive reasonably equivalent value
14 when it transferred funds to USAIP in exchange for incremental increases to this intercompany
15 receivable. USAIP's failure to repay such transfers and its ultimate bankruptcy has prevented any
16 possibility of USACM fully recovering on such obligations.
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20 14. In addition, the Culpable Insiders caused USACM to make scores of other payments
21 for which it received no benefit and for which it had no underlying obligation. Routinely, the
22 Culpable Insiders commingled USACM's operating funds with funds held in the USACM
23 Collections Trust Account and other funds to make regular interest and principal payments to
24 investors in non-performing loans. These payments were made to conceal delinquent and defaulted
25

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¹ The \$58 million obligation is in part or in whole reflected in the note between USACM and USAIP dated May 15, 2006. The Bankruptcy Court approved the note by order dated July 24, 2006.

1 loans from other USACM directors, officers, employees, shareholders, as well as the investors and
2 regulatory authorities. In turn, this induced existing investors to maintain or increase their
3 investments with USACM and enticed new investors to entrust their money to USACM, thereby
4 providing the Culpable Insiders with liquidity to fund their scheme, and thus, future sources of funds
5 to loot from USACM.
6

7 15. Ultimately, USACM lost millions of dollars by making principal and interest
8 payments on loan obligations that it did not owe on behalf of defaulting borrowers. USACM did
9 not receive any benefit from making these “pre-payments” of interest and principal. Rather, such
10 payments were expressly forbidden by Nevada law, including NRS 645B.250.
11

12 16. The Culpable Insiders also misappropriated USACM’s funds directly for their
13 personal benefit. USACM frequently made unsecured, interest-free “advances” directly to the
14 Culpable Insiders. In other instances, the Culpable Insiders misappropriated USACM funds to pay
15 for professional services rendered solely for the benefit of the Culpable Insiders and/or one of their
16 outside business ventures.
17

18 17. Ultimately, USACM lost tens of millions of dollars through the myriad of ways in
19 which the Culpable Insiders’ systematically misappropriated USACM funds.² Additionally, the
20 Culpable Insiders also systematically looted DTDF to fund USAIP and its affiliated entities.
21 Approximately \$55 million was taken from DTDF and sent to USAIP and related entities, either
22 directly or indirectly through two sham companies — 10-90, Inc. (“10-90”) and Mountain Vista,
23 Inc.
24
25

26 ² A more detailed discussion of the fraudulent scheme leading to USACM’s demise and bankruptcy may be found in the USACM Liquidating Trust’s Complaint Against Deloitte & Touche, LLP and Victoria Loob. See Docket No. 1 in Cause No. 2:08-cv-00461-PMP-PAL, pending in the United States District Court, District of Nevada, Las Vegas Division.

B. TRANSFERS FROM USACM TO DEFENDANT.

18. On October 1, 2001, USAIP and Salvatore J. Reale (“Reale”) formed Happy Valley LLC, a Nevada limited liability company, for the sole purpose of acquiring a lease interest in certain property which prior to acquisition was being leased by the Bureau of Indian Affairs to Palm Springs Marquis, LLC (the “PS Marquis Lease”). The operating agreement for Happy Valley LLC specified that USAIP and Reale were responsible on 50/50 basis for payment of any operating costs and expenses of Happy Valley LLC.

19. Upon information and belief, Defendant provided consulting and/or architectural services in 2002 and 2003 in connection with the PS Marquis Lease. Under the Happy Valley LLC operating agreement, USAIP and Salvatore Reale (“Reale”) were required to split the cost of Defendant’s services equally between them. However, despite such agreement between USAIP and Reale, the Culpable Insiders caused USACM to transfer \$214,027.02 from its operating account to pay for Defendant’s services in connection with the PS Marquis Lease.

20. Specifically, from April 19, 2002 through June 11, 2003, the Culpable Insiders caused USACM to issue the following checks from its operating account to Defendant (the “Transfers”):

Transfer	Amount	Date	Check No.
1	\$ 11,035.00	April 19, 2002	10678
2	\$ 16,043.17	June 17, 2002	11187
3	\$ 9,836.99	August 5, 2002	11518
4	\$ 40,780.05	January 20, 2003	12880
5	\$ 27,683.11	March 11, 2003	14137
6	\$ 25,288.43	April 9, 2003	14347

7	\$ 48,667.14	May 5, 2003	14526
8	\$ 34,693.13	June 11, 2003	14872
TOTAL	\$ 214,027.02		

21. Upon information and belief, USACM was reimbursed by Reale for half of these costs. Accordingly, USACM ultimately transferred \$107,013.51 of its own funds to Defendant as payment for services performed on behalf of Happy Valley LLC and for which it received no benefit.

22. Upon information and belief, USACM had no legal interest and no obligation to pay Defendant in connection with the PS Marquis Lease. Moreover, USACM did not receive any benefit from transferring funds from its operating account to Defendant in connection with the PS Marquis Lease.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION (11 U.S.C. § 544 and NRS 112.180(1)(a))

23. The Trust re-alleges and fully incorporates the allegations pleaded above as if fully set forth herein.

24. The Transfers each constitute a transfer of an interest of the Debtor in property.

25. The Transfers were made within the applicable four-year period under NRS 112.180(a)(1).

26. On the date of the Transfers, there were creditors with allowable unsecured claims who could have avoided the Transfers pursuant to Nevada state law.

28. Accordingly, the Transfers (a) are fraudulent under NRS 112.180(1)(a); and (b) may be recovered under NRS 112.220.

SECOND CAUSE OF ACTION
(11 U.S.C. § 544 and NRS 112.180(1)(b))

31. The Transfers each constitute a transfer of an interest of the Debtor in property.

33. On the date of the Transfers and the Petition Date, there were creditors with allowable unsecured claims who could have avoided the Transfers pursuant to Nevada state law.

35. The Debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the Debtor were unreasonably small in relation to the business or the transaction.

1 36. The Debtor was engaged in business or a transaction or was about to engage in
2 business or a transaction for which any property remaining with the Debtor was unreasonably small
3 capital.
4

5 37. The Debtor intended to incur or believed or reasonably should have believed that it
6 would incur, debts beyond its ability to pay as they became due.

7 38. Accordingly, the Transfers (a) are fraudulent under NRS 112.180(1)(b); and (b) may
8 be recovered under NRS 112.220.
9

10 39. Pursuant to 11 U.S.C. § 544(b), the Trust asks the Court to avoid the Transfers under
11 applicable state law.

12 **THIRD CAUSE OF ACTION**
13 **(11 U.S.C. § 550(a) and NRS 112.220)**

14 40. The Trust re-alleges and fully incorporates the allegations pleaded above as if fully
15 set forth herein.

16 41. The Transfers are avoidable under 11 U.S.C. §§ 544 (through NRS 112.180(1)(a)
17 and NRS 112.180(1)(b)).
18

19 42. The Trust may recover the value of Transfers as an initial transferee pursuant to 11
20 U.S.C. § 550(a)(1) and NRS 112.220.
21

22 **VI. PRAYER FOR RELIEF**

23 WHEREFORE, the Trust respectfully requests that the Court enter judgment as follows:

24 (a) Avoiding each of the Transfers;

25 (b) Directing Defendant to pay the value of the Transfers to the Trust;
26

(c) Directing Defendant to pay to the Trust all pre-judgment and post-judgment interest on the Transfers at the maximum rate allowable by law and/or equity;

(d) Directing Defendant to pay the Trust's costs of court; and

(e) Awarding the Trust such other relief that this Court deems just and proper.

Dated: April 11, 2008.

DIAMOND MCCARTHY LLP

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By: /s/ Erin E. Jones

By: /s/ Rob Charles

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